

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR USHERSON,

Plaintiff,

- against -

BANDSHELL ARTIST MANAGEMENT

Defendant.

Docket No. 1:19-cv-06368-JMF

DECLARATION OF JAMES FREEMAN

I, JAMES FREEMAN, declare under the penalty of perjury that the following is true and correct to the best of my personal knowledge.

1. I am an employee of Liebowitz Law Firm, PLLC (the “Firm”) and admitted to practice law in this District.

2. I am not counsel of record in this action but I have personal knowledge of the mediation that took place on October 31, 2019, as well as communications that took place the night before the mediation on October 30.

3. I submit this Declaration in opposition to Defendant Bandshell Artist Management (“Defendant”)’s motion for sanctions.

October 30, 2019

4. I was informed as to the existence of this matter at about 8:00 p.m. on October 30, 2019. Mr. Liebowitz notified me of the time/place of mediation, sent me copies of the complaint

and the most recent settlement agreement draft, informed me of the price agreed to and the outstanding non-monetary terms concerning right of publicity. Mr. Liebowitz indicated that the case was likely to settle that evening but that if it didn't, I should be prepared to attend the mediation in person.

5. On October 30, Mr. Liebowitz also informed Mr. Usherson that I would be appearing at the mediation on Mr. Usherson's behalf and provided me with Mr. Usherson's telephone number. It was my understanding as of the evening of October 30 that Mr. Usherson would be participating in the mediation via telephone because he resides in Georgia.

6. The Firm currently has approximately 440 pending actions filed in the U.S. District Courts, with only three lawyers to service those cases. Given the high volume of Mr. Liebowitz's practice, it is quite common for Mr. Liebowitz to seek my assistance on any number of cases upon less than 24-hours notice, even where I have not entered a notice of appearance.

7. I have personally participated in well over two dozen mediations in this Circuit. Whether mediation is conducted by a Magistrate Judge or by a Court-approved mediator, it is routine practice in this District for clients who reside more than 100 miles from the courthouse to participate in mediation by telephone provided, of course, that counsel participates in person.

October 31, 2019

8. I personally attended the mediation scheduled for October 31, 2019. I attended the mediation along with Rebecca Liebowitz, an employee of the Firm who is newly admitted to practice in this District.

9. Ms. Liebowitz and I arrived at the mediation room in the lower level of 40 Foley Square at about 11:46 a.m. [REDACTED] the mediator, defense counsel and defendant's representative were all present when we arrived.

10. Defense counsel initially objected to proceeding with mediation because Mr. Usherson was not present in-person. I indicated that Mr. Usherson was available by telephone, as was common practice for out-of-state plaintiffs.

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. [REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

15. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

16. I did not record the exact time I left the mediation room. However, I estimate that no more than 40-45 minutes passed from the time I first entered the room until the time when the mediation was adjourned.

17. [REDACTED]

[REDACTED]

[REDACTED]

Dated: November 18, 2019
Valley Stream, NY

/jameshfreeman/
James H. Freeman